

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current and previously issued FIRs are available on the NM Legislative Website (www.nmlegis.gov) and may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

SPONSOR Maestas Barnes/
Ivey-Soto ORIGINAL DATE 3/03/17 LAST UPDATED 3/06/17 HB 474

SHORT TITLE DWI Electronic Safety Monitors SB _____

ANALYST Rogers

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	\$0.0	Unknown, potentially moderate	Unknown, potentially moderate	Unknown, potentially moderate	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Law Offices of the Public Defender (LOPD)

Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of Bill

House Bill 474 requires counties or courts operating a 24/7 sobriety monitoring program to provide electronic alcohol monitoring services and devices (such as the SCRAM-CAM continuous alcohol monitoring bracelet, according the AOC) to be worn on the person of the pre-adjudicated “repeat arrestee” at no cost to the defendant.

HB 474 prevents the release of the “repeat arrestee” on bail or personal recognizance unless this monitor is placed on the person, provided the monitor is available for use at the time of release. The “repeat arrestee” is anyone who has been arrested for a violation of Section 66-8-102 NMSA 1978 and who was previously arrested for a violation of Section 66-8-102 NMSA 1978, regardless of the disposition, within three years of the current arrest, or was convicted of a violation of Section 66-8-102 NMSA 1978 within ten years of the current arrest, or was adjudicated delinquent for DUI within ten years of the current arrest.

FISCAL IMPLICATIONS

LFC analysis indicates an electronic monitoring device can cost more than \$700 per unit. This bill may necessitate the purchase of additional units to monitor all persons effected by this bill.

The courts may also need to increase the number of staff supervising those on the monitors; the average annual salary of a probation officer in the Second Judicial District Court, including benefits, is \$53 thousand. The cost of new devices and staff to monitor them could have a significant fiscal impact.

AOC explains the fiscal impact on the courts is unknown at this time; however, there are at least two aspects of HB 474 that could impact the ability of the courts to provide services without additional funding. First, infractions amounting to violations of conditions of release during this pretrial phase will have to be processed by the court, potentially resulting in additional time of court staff. Second, courts are mentioned as one of the entities potentially required to provide these services. Expanding such services would have a fiscal impact due to additional workload and/or additional staff.

SIGNIFICANT ISSUES

AOC explains HB 474 requires credit for time served for the period of time during which a person is in the monitoring program. This is problematic for at least four reasons:

1. Making this mandatory would eliminate judicial discretion in the matter.
2. In terms of the advantage of credit for time served, this would equate alcohol monitoring with house arrest, but without the limitations on movement.
3. The defendant could easily spend 90 days on a monitoring device while awaiting disposition of a first DWI, eliminating the judge's option to enforce probation and incarcerate at a later time.
4. HB 474 could trade substantive treatment and rehabilitative time for alcohol monitoring alone. Giving weeks and months of credit for time served could significantly limit the amount of time available post-conviction for substantive treatment services, and in some cases, might render a defendant ineligible for services altogether due to not having enough probation exposure to complete the program.

ADMINISTRATIVE IMPLICATIONS

The AOC explains “it is not clear whether a program currently offering a ‘24/7 sobriety monitoring’ can refuse to offer services based on funding limitations. For example, if drug courts offer this type of monitoring for drug court participants, they might be required to provide these services for dozens, or even hundreds, of individuals who are outside the scope of their primary function and well outside their funding levels.”

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 474 relates to HB 471, which would allow credit for different types of pre-sentence conditions.

TECHNICAL ISSUES

AOC points out the following technical considerations:

Some of the programs currently providing these services are able to do so by passing some or all of the cost on to offenders. HB 474 prohibits assessing costs to offenders and suggests

other potential funding sources; however, there is no mandate for any of the suggested sources to provide funding to any program providing the services.

The five potential funding sources referred to in HB 474 are listed below followed by further analysis:

1. The local DWI grant fund. Although this fund may be used for electronic monitoring, it is governed by both statute and DFA guidelines as well as the local DWI programs in each of the thirty-three NM counties. The local programs have a large degree of autonomy in determining how the funds are spent at the local level, and there are no assurances they will suspend or replace other programming for this endeavor.
2. Grants made available. There is not enough information in HB 474 to know what other grants may be available.
3. Fees paid by offenders convicted of driving under the influence of intoxicating liquor or drugs to local or state courts. Current fees related to conviction of a violation of 66-8-102 include the DWI Lab Fee of \$85 and the DWI Prevention Fee of \$75. The DWI Lab Fee is distributed to the Department of Health (Scientific Lab) and the Albuquerque Police Department to defray the costs of chemical and other tests utilized to determine the influence of liquor or drugs. The DWI Prevention Fee is distributed to the Highway and Transportation Department to fund comprehensive community programs for the prevention of DWI and other traffic safety purposes. It is unknown if these agencies would divert funds in support of county or court programs providing 24/7 sobriety monitoring.
4. A county DWI task force. It is unknown how many such task forces exist and the level of funding available through this source.
5. Funds administered by a board of county commissioners. It is unknown how much funding is potentially available from local county government, or whether commissioners will dedicate funds a county or court 27/7 sobriety monitoring program.

Defendants arrested for a violation of Section 66-8-102 NMSA 1978 often install an Ignition Interlock prior to final disposition of their cases, or have the ignition interlock installed in compliance with a previous conviction under the same section. HB 474 would require a defendant with the Ignition Interlock installed to wear a device on their person as well.

OTHER SUBSTANTIVE ISSUES

AOC explains in addition to those previously convicted within the last ten years, HB 474 monitoring would be imposed on anyone previously arrested for a violation of Section 66-8-102 NMSA 1978, regardless of disposition. Exactly how many individuals potentially requiring this level of intensive monitoring services is unknown.

HB 474 would require the installation of an alcohol monitoring device on the defendant's person regardless of the relationship of alcohol to the current charge, any adjudication of guilt in the current case, and without any previous conviction for an alcohol-related offense of any kind.

The definition of "electronic sobriety monitor" effectively eliminates all other electronic monitoring options and seemingly creates a sole source provider. Although a transdermal system worn by the defendant provides 24/7 alcohol monitoring, other electronic sobriety monitors exist that require the defendant to submit breath tests with the frequency established by the monitoring

agency. The cost per day of the device as defined in HB 474 is typically about \$9 per day per person or higher. Other breath sample electronic monitoring devices are available at about 40% of that cost per day.

TR/sb